

Outline of Testimony of Frederick B. Locker, Esq.
Before the Subcommittee on Commerce, Trade & Consumer Protection
May 15, 2007

A. Introduction

Children's products are highly regulated in the U.S. Although the theme of the Hearing: "*Protecting our Children: Current Issues in Children's Product Safety*" is of interest to all, the fact remains that the U.S. has a fairly exhaustive scheme of regulation by effective mandatory and consensus standards that results in relatively high levels of product safety for children's products. Efforts to improve children's product safety are always welcome.

B. What the CPSC Needs to Do Better

- Retain the experienced personnel and add to their staff experts qualified to analyze emerging hazards and demonstrable patterns in data that prioritize risk to consumers;
- Prioritize risks to children and work to develop standards consensus, if effective or mandatory to address such risks.
- Create information and education campaigns that reinforce safety messages to the public, recognizing changing demographics of society;
- Support outstanding rulemakings or reviews on lead in children's metal jewelry, ATVs and upholstered furniture
- Continue to monitor effectiveness of compliance with standards governing nursery products and furniture tip over hazards;
- Assist Internet-based retail of products to deliver the appropriate age grading to products;
- Work with retailers to maintain recall posting notices;
- Continue to engage with foreign countries that export products into the United States to educate about U.S. requirements and to ensure that exported product meets such requirements.

C. Conclusion

The CPSC already possesses the requisite regulatory authority to fulfill its mission. However, it needs to continue to be able to leverage collaborative action by other U.S. governmental agencies, such as continued Customs enforcement in the Department of Homeland Security. Development of consensus standards should be maintained as an important activity, since these standards can be implemented or modified much more efficiently than can be accomplished by rulemaking. Rulemaking remains as an alternative if such standards are not effective. Provisions protecting confidential information under Section 6(b) of the CPSA should be maintained to encourage companies to report without fear of economic or competitive harm. Penalty limits are already subject to COLA adjustment under existing statutes.



**TESTIMONY OF
FREDERICK LOCKER, ESQ.**

**Before the
SUBCOMMITTEE ON COMMERCE, TRADE AND CONSUMER
PROTECTION
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES**

**PROTECTING OUR CHILDREN:
CURRENT ISSUES IN CHILDREN'S PRODUCT SAFETY**

May 15, 2007

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Chairman Rush and members of the Subcommittee, thank you for the opportunity to provide comments about the important subject of children's product safety. I am Frederick Locker, General Counsel to the Toy Industry Association (TIA). There is no more important theme than protecting our children. As much work as we all do, there is always room for improvement. We may not always agree with everyone appearing before you today, but we always stand willing and committed to work for the betterment of children's lives.

TIA

TIA is a not-for-profit trade association composed of more than five hundred (500) members, including manufacturers whose aggregate sales at the retail level exceed \$22 billion annually (regular members), as well as product design firms, toy testing labs and safety consultants, and others (associate members). The U.S. Toy Industry leads the world in the innovative, cost-effective design and sale of toy products. We are in the business of developing fun, innovative products with which children can play and learn. TIA's primary office is located in New York City. TIA members account for 85% of domestic toy sales and, global in character, approximately 50% of all toys sold worldwide. TIA emphasizes the importance play has in all children's' lives. Not only is it fun and educational, but a necessary part of growing up. Play is the way children learn. However, to ensure that all children have a positive play experience, TIA's primary concern is that play is safe. Together with the U.S. government, TIA and its members have led the world in the development of toy safety standards by investing heavily in child development research, dynamic safety testing, quality assurance testing, risk analysis and basic anthropometric studies of children. Moreover, since the 1930's, TIA has established a tradition of working with others to ensure the manufacture and distribution of safe toys.

TIA is proud of its record of significant accomplishments in the area of toy safety over many decades through relationships with the National Safety Council (NSC), National Bureau of Standards (NBS), American National Standards Institute (ANSI), ASTM International (formerly American Society for Testing and Materials, ASTM) and International Organization for Standardization (ISO). We have also worked in collaboration with many charities and consumer organizations to promote the well-being of children. This includes working with the International Consumer Product Health and Safety Organization (ICPHSO), International SAFE

KIDS, and others to advocate the need for product safety initiatives in both the U.S. and internationally.

This commitment to toy safety continues today. Comprehensive and accurate information is available any time of day, through a specially-designed area on the TIA website: www.tia.org/consumer/parents/safety/4toysafety.html.

The ASTM Consumer Safety Specification on Toy Safety is Globally Preeminent

Under the auspices of NBS, TIA led in the development of a voluntary safety standard for all toys in 1976, and then, in 1986 it was revised and designed under ASTM. The current standard is the *ASTM F963-07 Consumer Safety Specification on Toy Safety*, was just published at the beginning of this month. All of the federal toy safety regulations, which appear in the Code of Federal Regulations Title 16-Commercial Practices, are referenced in ASTM F963. As you've heard today, ASTM is one of the largest voluntary standards development organizations in the world. The standards are considered extensive and extraordinarily effective. They were the model for European and global toy safety standards.

Almost all toy packages include a suggested age range for use. A child's actual age, physical size, skill level and maturity, as well as safety, are all taken into consideration when developing age labels for different types of toys. To help manufacturers reach a greater degree of consistency in age grading practices and age labeling toy packages, CPSC publishes a manufacturers' guide for age labeling toys. Since children develop at different rates and vary in their interests and skills, age labeling on packages is intended to give the consumer a general guideline on which to rely to base toy selections. Typical designations might be "Recommended for children from eighteen months to three years" or "Not recommended for children under three years of age." Additional specific cautionary labeling requirements specified by ASTM F963 or by CPSC regulations cover products such as crib gyms, electrically operated toys, chemistry sets, swim-aids and such toy features as functional points and edges (i.e. paper doll scissors and toy sewing kit needles). The standard also contains cautionary labeling requirements, as mandated by the U.S. Consumer Safety Protection Act (CSPA, 1995), relating to potential choking hazards to children under three years of age from toys or games *intended* for children ages three through under six years, which contain a small part, any small ball, marble or balloon. TIA supported

this 1994 legislation. Regardless of labeling, however, there is simply no substitute, at any age, for appropriate adult supervision.

If a manufacturer misrepresents compliance with ASTM F963, the company is subject to prosecution under Section 5 of the Federal Trade Commission Act, which prohibits unfair and deceptive methods of competition.

How the Industry Tests Its Toys for Safety

There are innumerable specialized tests and design specifications included in a broad scheme of mandatory federal regulations and ASTM F963 that apply to toy products. These help reduce or eliminate potential hazards involving toys during normal use or reasonably foreseeable abuse conditions. These include, but are not limited to, testing requirements addressing mechanical, electrical, thermal and chemical hazards. For example, testing involves simulated use-and-abuse tests, testing for accessible sharp points, edges, small parts, projectiles, heavy metals in paint and similar surface coatings, flammability, toxicity, and even acoustical restrictions on noise levels. Many manufacturers, especially larger ones, have their own in-house testing laboratories sophisticated enough to ensure that products meet standards for safety. Those without safety facilities on site use independent testing laboratories. Manufacturers producing toys overseas test them before shipping, and then sample production lots again once they arrive in the United States. Major retailers duplicate this process on product orders. TIA and its members are vitally interested in developing and maintaining reputations as “safety conscious” companies. Similar to the other witnesses on this panel, we support the important and essential mission of the Commission.

CPSC Performs a Vital Function

CPSC’s mission is to protect children and families against an unreasonable risk of injury and death from more than 15,000 types of consumer products from a wide range of product hazards. Their work is vital in that it addresses consumer product hazards through a framework of mandatory product safety standards; engagement in the voluntary or consensus standard-setting process; compilation of consumer injury data; issuance of safety guidelines; implementation of information and education programs in an effort to proactively avoid injuries;

and product recalls and corrective actions when necessary. The agency is operating on a relatively modest budget, with a request of \$63,250,000 for fiscal year 2008. We believe that their budget request should be granted with increases earmarked for retention of staff, upgrades to their testing laboratory and support of increased coordination with other countries regarding harmonization of standards with better inspection and enforcement coordination.

With respect to reauthorization of the Commission, we ask this Committee to act thoughtfully in any review of a regulatory structure that has served the American public well for the more than 30 years. U.S. manufacturers in the consumer product industry presently face increasing global competition that is more intense than ever before. In such an economic environment, U.S. manufacturers should not be disadvantaged by an unnecessarily intrusive and inefficient domestic regulatory regime.¹

CPSC Is Working With Limited Resources

The Commission works well with and understands the needs of manufacturers, retailers and the consumers. Whenever appropriate, they have encouraged voluntary collaborative actions among stakeholders to address safety requirements. During the past decade, they have worked cooperatively with industry to conduct more than 5,000 recalls and needed to resort to litigation to compel recalls only several times. In 2006, CPSC completed 471 product recalls involving nearly 124 million product units that either violated mandatory standards or presented a potential risk of injury to the public and negotiated civil penalties of approximately \$2.3 million. In addition, the CPSC compliance staff has continued to refine its Retailer Reporting Model implemented in 2005 and used by two of the nation's largest retailers. This provides additional trending complaint data for evaluation by the staff, which supplements manufacturer and consumer reporting. With shrinking resources, leveraged collaborative action is preferable to

¹ It is interesting to note that the European Union recently announced that it wants to boost trade between EU countries by making it more difficult for member states to block imports of specific products on the basis that they do not meet a national product safety standard. The EU wants member states to bear the cost and burden of demonstrating that a product is unsafe if they wish to remove it from their market. *Procedures Relating to the Application of Certain National Technical Rules to Products Lawfully Marketed in Another Member State and Repealing Decision 3052/95/EC.*

mandatory regulations provided it can be implemented in a timely fashion and adequately addresses an unreasonable risk of injury.²

Today's U.S. economy is consumer-driven. An enormous number and variety of consumer products are designed, manufactured, imported and sold in the United States. With that in mind, industry, standards organizations and internal safety requirements developed in cooperation with manufacturers result in some of the best hazard-based standards that ensure that American consumers may be comfortably secure in the safe use of their consumer products. Many companies also increasingly recognize the value of taking responsible corrective action to address patterns of injuries or misuse that may indicate a problem with their product. This accounts for the vast majority of product recalls conducted in cooperation with the Commission. Of course, there are still occasions where the Commission justifiably acts to remove unsafe products from the marketplace and to set standards where private standards either do not exist or are clearly inadequate. Consumer product manufacturers are committed to working with the Commission to achieve these objectives. We have consistently supported Commission efforts, along with the U.S. Customs Service, to monitor imported products to ensure that they meet mandatory federal safety standards. We recognize that this has been an efficient leveraging of resources to enhance enforcement related to product imports. In addition, we note that the Commission has played an increasingly significant role in educating consumers about safety concerns and practices. We note that they employ capable high-level and well-experienced Epidemiologists, Toxicologists, Physiologists, Chemists, Engineers, Statisticians, and Economists to inform their decision-making. They have performed well in OMB assessments of their overall regulatory policies.

CPSC Needs To Allocate Resources Based Upon Demonstrable Data

In spite of remarkable progress that dramatically improved the length and quality of children's lives in the U.S. over the past century, today's children still face significant, real risks.

² An excellent example is their work with industry to revise the ASTM consensus baby walker safety standard to address injuries from stair falls. New walkers with safety features are now on the market. There has been a decrease in injuries of over 84 percent since 1995, likely due in large part to the effectiveness of such standard requirements. The commission projected societal costs decreased by about \$600 million annually from this one action. Similarly, there was an 89 percent reduction in crib-related deaths from an estimated 200 in 1973 and an 82 percent reduction in poisoning deaths of children younger than 5 from drugs and household chemicals from 216 in 1972.

For example, often-avoidable unintentional injuries take the lives of more than 1 out of every 10,000 children in the U.S. annually. That may not sound like a lot, but this includes over 150 infants that die before their first birthday in motor vehicle accidents and nearly 50 who drown in bathtubs.

**Estimated Annual Mortality Risk for Children under Age 10
(Number of deaths per million children)³**

Motor vehicles	46	Guns	5
Drowning	20	Poisoning	2
Suffocation	17	Bicycles	2
Fire	16	Medical care	2

In addition, statistics that show other significant risks to children include⁴:

- 16% of American children under the age of 18 live in families with incomes below the poverty level
- 4% live in households experiencing food insecurity with moderate to severe hunger
- 69% live in two-parent families, down from 77% in 1980
- Birth rate for females (age 15-17) around 26 per 1000
- Substance use rates are high
 - 21% of 12th graders smoke daily
 - 30% of 12th graders have at least 5 drinks in a row at least once in the previous 2 weeks
 - 25% of 12th graders report illicit drug usage in past 30 days
- 14% of young adults age 18-24 have not completed high school
 - 8% of youths age 16-19 are not in school or working

Further, as you can see, the risk of death to children from toys does not figure prominently in much of the data. The actual rates for toys would be about the same as the rate of suicide for children under 10, which is extremely rare! Of course Accidents still occur. We are committed to action when patterns of hazards emerge. The fact that the recently published ASTM-F963-07 incorporates new provisions intended to address unreasonable risks from injury with certain *magnetic toys, yo-yo waterballs* and *steering wheel openings*, clearly demonstrates this.

³ Harvard University School of Public Health, Kids Risk Symposium, March 26-27, 2003 (Kimberly Thompson, M.S. SCP, Assoc. Professor of Risk Analysis and Decision Science, Children's Hospital Boston, Harvard Medical School Co-Founder/Director of Research Center on Media and Child Health; Director HSPH Kids Risk Project.

⁴ Based on 1997 data from: (1) the National Center for Injury Prevention & Control, Centers for Disease Control and Prevention and population estimates from Statistical Abstract of the United States for 1997.

Compare the above childhood risks with the handful of “toy-associated” deaths per year for children from birth to approximately age 13 (primarily balloons and ride-on toys like scooters), or to CPSC’s own annual report that indicates that of fifteen commonly used household products, toys had among the lowest number of incidences of injuries and deaths. Although there are risks associated with some toys, they are clearly very small by comparison. We recognize that media attention continues to focus on the small risks associated with toys while some very big risks remain underappreciated and unaddressed. In a world where perception is reality, where misinformation often drives perception, and where new, scary and uncertain hazards receive widespread attention, it is no wonder that policy makers and parents lack context for understanding and managing children’s risks. Unfortunately, the net result is that we often collectively waste scarce financial resources at the expense of allocating them efficiently to make children’s lives measurably safer. Further, this perpetuates a lack of coordination between groups that are all arguably committed to helping children; focuses on individual issues and agendas instead of children themselves; and competition rather than cooperation for the resources to truly protect children.

Along those lines, we believe that there are ways to make the Commission more effective and at the same time more efficient. Allow me to share a few proposals on ways the Commission can increase its effectiveness in protecting consumers while minimizing burdens on the manufacturing sector of this country.

RECOMMENDATIONS

1. Collaborative Information and Education Programs

First, we support dynamic new partnerships between stakeholders and the Commission to promote safety and safe consumer practices. Consumer information and education does not substitute for the essential responsibility of manufacturers to provide safe products, but it can help with a large percentage of accidents due to improper or irresponsible conduct or lack of

supervision of minors. The Commission is fully authorized to embark on such programs, but encouragement from Congress should be provided.⁵

2. Continued Involvement in Consensus Safety Standards and Activities

Second, we are supportive of the Commission's involvement in private standards activities as authorized in the current statute. These standards are the bulwark of our national and even international safety system, and the Commission plays an important role in providing comments and proposals.⁶ However, we believe the Commission needs to better manage and supervise its internal process, particularly staff input to standards organizations, to ensure an opportunity for public comment and to prevent proposals which lack technical merit or otherwise cannot be justified as federal standards. This is why we support the Commission's stated strategic goal to improve the quality of CPSC's data collection through 2009 by improving the accuracy, consistency and completeness of the data. For an agency such as the CPSC, it is essential to maintain and use accurate data as a valuable tool to allocate staff time and resources to address emerging real world hazards.

3. Continued Efforts to Engage and Educate Small Manufacturers

Third, there is a need for better guidance and education from the Commission on the implementation of the Section 15 Substantial Product Hazard Reporting provisions. Manufacturers with defective products that could create substantial product hazards are obliged to report to the Commission and, if needed, to take corrective action including recalls. However, the law and implementing regulations are vague and ambiguous. It is difficult for manufacturers,

⁵ CPSC has been increasingly effective at using electronic media and websites. The creation of [Hwww.recalls.gov](http://www.recalls.gov) and enhancements to their website has resulted in a rapid growth from 200,000 visits in 1997 to what is expected to be almost 25 million visits by the end of the year. Product safety information is increasingly available in Spanish and other languages. In addition, outreach activities such as the Neighborhood Safety Network; collaborative efforts with FEMA and public information education initiatives with NGOs and industries have resulted in increasingly effective communication about fire and carbon monoxide hazards, disaster preparedness, hazards associated with recreational vehicles, proactive holiday safety messaging, poison prevention, pool drowning risks and back to school safety programs.

⁶ CPSC has worked with stakeholders to develop effective consensus standards completing approximately 10 times as many voluntary standards as mandatory standards (CPSC assisted in completing and developing 352 voluntary safety standards while issuing 36 mandatory standards from 1990 through 2006).

especially small businesses, to determine when reporting and corrective action is necessary. Likewise, it is difficult for them to comprehend how the penalty for the failure to report in a timely fashion is justified by the agency. We support the Commission's efforts to clarify guidance on reporting and penalty computation by issuance of guidelines, which were subject to prior publication, comment and review prior to adoption.⁷

4. A Strong Role in Setting and Enforcing Safety Standards in a Global Economy

Fourth, in a global economy, we note the importance of the agency's international engagement to ensure greater import compliance with U.S. safety standards and harmonization of standards to promote export opportunities for American businesses and the elimination of non-tariff trade barriers. CPSC has entered into Memorandums of Understanding (MOU) with a number of foreign governments to provide for a greater exchange of information regarding consumer product safety. We note by the end of 2008, CPSC expects to have MOUs with 17 countries. These activities are becoming increasingly important in helping to ensure consistent hazard-based, harmonized global safety standards.

5. Existing Regulatory Framework is Effective, But More Resources are Needed

Finally, we believe that the existing authority granted to the Commission under the Consumer Product Safety Act and related Acts, together with existing implementing regulations, are sufficient for the CPSC to execute its mission in an effective manner. The CPSC does not lack the requisite authority to implement fully its congressional mandate "to protect the public against unreasonable risks of injury associated with consumer products." However, it requires greater resources to implement such authority.

Thank you for providing me the opportunity to testify. The Commission is an important agency and we fully support its mission. It can and should, have the funding and resources it needs to effectively function and we look forward to working with the Commission and the Committee to this end.

⁷ Federal Register, Vol. 71, No. 142, pages 42028-42031 and proposed interpretive rule, Federal Register, Vol. 71, No. 133, pages 39248-39249